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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Request for Declaratory Ruling Regarding the Use of Section 252(i) To Opt Into Provisions Containing Non-Cost-Based Rates	)	CC Docket No. 99-143

REPLY COMMENTS OF ICG COMMUNICATIONS, INC.

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May 26, 1999

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ICG Communications, Inc. ("ICG"), by its counsel, hereby submits its reply comments on GTE's Petition for Declaratory Ruling ("GTE Petition"). As the initial comments make clear, GTE has misread the plain language of Section 51.809 of the Commission's Rules and Section 252(i) of the Communications Act of 1934 (the "Act") in arguing that competitive carriers cannot opt into interconnection agreement provisions that are "no longer cost based." The GTE Petition also is otherwise wholly ineffectual and should be summarily denied.

GTE's core -- yet patently wrong – contention is that:

> [T]he rates and costs CLECs are requesting [for ISP-bound traffic and switching] are no longer cost-based so allowing a requesting carrier to opt-into these arrangements would be contrary to Section 51.809 of the Commission's Rules. GTE urges the Commission to issue a declaratory ruling clarifying that ILECs do not have to make available provisions of interconnection agreements under Section 252(i) if those provisions are no longer cost-based.

. . . .

> Section 51.809 of the Commission's Rules provides that ILECs do not have to make available under Section 252(i) provisions of agreements in which the costs of providing a particular interconnection, service, or element to the requesting carrier are no longer cost-based. Provisions requiring the payment of reciprocal compensation on ISP-bound traffic and certain CLEC switching rates fall within this rule. Therefore, under Section 51.809, requesting carriers should not be permitted to opt into these provisions.

GTE Petition, pp. 1-2, 4-5 (footnote omitted).

As the initial comments clearly and overwhelmingly demonstrate, GTE's reliance on Section 51.809 of the Commission's Rules and Section 252(i) of the Act is utterly misplaced. Section 51.809 of the Rules, which reads in relevant part as follows, could not be clearer:

> The obligations of [an ILEC to make available provisions in existing agreements to requesting carriers] shall not apply where the [I]LEC proves to the state commission that: (1) The costs of providing a particular interconnection, service, or element *to the requesting telecommunications carrier* are *greater* than the costs of providing it to the telecommunications carrier that originally negotiated the agreement . . . .

47 C.F.R. § 51.809(b) (emphasis supplied).

As the parties filing initial comments explained, this narrow exception applies only when the ILEC's costs of serving a requesting CLEC would be demonstrably higher than that of serving the CLEC with an interconnection agreement that the requesting CLEC wants to opt into. This a far cry from GTE's broad assertion that the Rule somehow applies whenever the rates in question are "no longer cost based." For a more detailed discussion of this issue, *see, e.g.,* Comments of Time Warner Telecom, pp. 3-4; Opposition

of the Competitive Telecommunications Association ("CompTel"), pp. 3-4; Joint Comments of The Association for Local Telecommunications Services ("ALTS"), *et al.* pp. 5-6; and Opposition of Cox Communications, Inc., pp. 2-4.

The parties filing initial comments also make clear that GTE's position conflicts with the terms and Congressional intent of Section 252(i). Section 252(i) provides that an ILEC must make available to a requesting carrier any "interconnection, service, or network element provided under an [approved agreement] . . . upon the same terms and conditions as those provided in the agreement." As the commenting parties explain, the Commission has found that this provision "is a primary tool of the 1996 Act for preventing discrimination," and in no way provides support for GTE's proposed refusal to offer provisions in existing agreements to requesting CLECs. CompTel Opposition, p. 2; Joint Comments of ALTS *et al.*, p. 8; AT&T Opposition, p. 4.

The initial comments also demonstrate that GTE's requested relief – a ruling that "CLECs cannot opt into interconnection agreement provisions which are no longer cost-based" [1]-- is unworkable and bad policy. As one of the commenting parties properly notes:

> [W]hile GTE purports to limit its request to certain rates that are "no longer cost-based," it is utterly silent as to how CLECs may avoid the invariable slippery slope of other rates and terms that GTE will undoubtedly deem no longer valid and thus unavailable for opt-in. Indeed, if the reasoning in GTE's Petition were accepted, GTE would certainly use the precedent to preclude CLECs from opting-in to a host of other terms.

[1] GTE Petition, p. 11.

Joint Comments of ALTS, *et al.*, p. 8. In light of the critical importance to CLECs of "speed to market" (Joint Comments of ALTS, *et al.*, p. 13), it is not surprising that the other commenting parties also emphasize their concern for the quagmire of lengthy and expensive cost proceedings and appeals that would result from a grant of the relief sought by GTE. *See, e.g.,* AT&T Opposition, p. 5; Comments of MediaOne Group, p. 2; Comments of Qwest Communications Corporation, pp. 7-8; Sprint Comments, p. 2.

The specific targets of the GTE Petition are reciprocal compensation for ISP-Bound traffic and symmetrical switching rates. In both instances GTE's arguments are far wide of the mark.

As noted by the commenting parties, GTE's arguments on reciprocal compensation for ISP-bound traffic simply ignore the Commission's recent ruling on that very subject. In *Inter-Carrier Compensation for ISP-Bound Traffic,* CC Docket Nos. 96-98 and 99-68, Declaratory Ruling and Notice of Proposed Rulemaking (released February 26, 1999), the Commission invited comment on the issue and directed that until a federal rule is adopted state commissions were free to resolve questions of compensation for such traffic. AT&T Opposition, pp. 2-3; Time Warner Telecom Comments, p. 6; CompTel Opposition, pp. 7-8.

The commenting parties especially call GTE to task for disregarding the Commission's guidance on symmetrical switching rates. As the parties note, the arguments presented in the GTE Petition were earlier raised by GTE and rejected by the Commission

in its *Local Competition Order*.[2] AT&T Opposition, pp. 6-7; Time Warner Telecom, pp. 7-8.

Only one ILEC – GTE's pending merger partner, Bell Atlantic – filed in support of the GTE Petition. In light of the professed widespread interest of ILECs in reciprocal compensation for ISP-bound traffic, this lack of support underscores the frailty of the petition.

Given GTE's misreading of Section 51.809 of the Rules and Section 252(i) of the Act, and its failure to address the Commission's prior resolution of the issues raised, the Commission should summarily deny the relief GTE seeks.

Dated: May 26, 1999

Respectfully submitted,

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[2] *Implementation of the Local Competition Provisions in the Telecommunications At of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996).

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 1999, a copy of the foregoing Reply Comments Of ICG Communications, Inc. was delivered by first class mail or hand delivery on the following parties:

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